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No. 692

In the

Supreme Court of the United States

OCTOBER TERM, 1967

PAUL V. BYRNE, JR.,

Petitioner,

vs.

CHICAGO TITLE AND TRUST COMPANY, individually and as trustee of trust agreements No. 42212 and No. 44999; THE CATHOLIC BISHOP OF CHICAGO, a corporation sole; THE FIRST NATIONAL BANK OF CHICAGO, individually and as trustee of trust agreement No. 51296-6; ROGERS, PAUL and HANSEN; QUINN, JACOBS, BARRY, and LATCHFORD; QUINN, JACOBS and BARRY; JOHN B. HENDRICKS; FRANCIS E. SCHLAX; ROBERT V. HOGAN; FRANK A. KARABA; DON W. FEELEY; KIRK L. MacKINNON; GEORGE A. HANSEN; VLADMIR G. URSE, LORETTO TENNES, individually and as trustee of the Thomas Byrne Estate Liquidation trust; ALBERT BUCKLEY; DONALD MASTERSON; NORA CAMPION; THADDEUS ADESKO; and ROBERT L. HUNTER,

Respondents.

PETITIONER'S REPLY TO BRIEFS IN OPPOSITION TO PETITION FOR CERTIORARI

AND

AMPLIFICATION OF REASONS FOR GRANTING PETITION

PAUL V. BYRNE, JR.,
10 South LaSalle Street
Chicago, 60603, Illinois
Petitioner

NO. 692
In The
SUPREME COURT OF THE UNITED STATES
October Term, 1967

PAUL V. BYRNE, JR.,
Petitioner

-v-

CHICAGO TITLE AND TRUST COMPANY, etc., et al.,
Respondents

PETITIONER's REPLY TO BRIEFS IN OPPOSITION OF RESPONDENTS FIRST NATIONAL BANK OF CHICAGO, HANSEN, FEELEY, KARABA, MacKINNON, HENDRICKS, ROGERS, PAUL AND HANSEN; AND AMPLIFICATION OF REASONS FOR GRANTING PETITION

The contentions raised in the briefs of respondents in opposition to the petition for certiorari have brought into clear focus the role of this Court as a national tribunal created to serve and maintain the principle of national supremacy by judicial enforcement of the Bill of Rights where local parochial tyrannies and petty provincial despotisms supplant the usual and accepted standards of judicial procedure in order to circumvent the national Constitution's guarantees of personal rights of liberty and property.

None of these respondents have advised the Court that there are contentions raised in their briefs and memoranda which had not been considered upon any hearing and argument in the courts

below in this case, as appears in the record filed herein.

A.

WITH RESPECT TO CONTENTIONS RAISED IN BRIEF OF FIRST NATIONAL BANK OF CHICAGO AND MEMORANDUM OF KARABA

Had petitioner been afforded the opportunity to be heard on points now being urged for the first time upon this Court he would have suggested that the reliance of the respondents on the order of Judge Hunter entered on October 8, 1965 (R. 68-70, First National brief, pp. 4-7; Karaba memorandum, p. 2) to exculpate their devastation of petitioner's estate is misplaced.

Neither the First National Bank of Chicago, nor the law firm of Rogers, Paul and Hansen, nor Mr. Hansen, nor Mr. Hendricks, nor Mr. Karaba, nor Mr. Feeley, in their proper person or by counsel, have any appearance on file, or of record in the proceedings before Judge Hunter. Nor was any of the respondents a party to the action in a representative capacity or otherwise. Nor did any of the respondents present any pleadings or motions, orally or on paper, in the subject proceedings---although they are telling this Court that "* * * they represented The First National Bank of Chicago in the proceedings referred to by Petitioner * * *" and "These respondents first appearance in an action involving Petitioner was on May 7, 1964 * * *" and "On May 7, 1964, the Bank was served with a Petition * * *" (First National brief, p. 2).

By a process of judicial legerdemain Mr. Karaba is able to get $700.00 for his client, Hendricks from "judgment creditor Paul V. Byrne, Jr., " purportedly in consideration of release,

satisfaction, and stipulation to dismiss a"garnishment proceedings No. 64 M1- 510834" against First National Bank of Chicago as trustee of petitioner's funds (Karaba brief, p. 2); and the First National Bank of Chicago took $1,000.00 of petitioner's funds---in addition to fees previously collected--- through the largesse of a kindly Judge (First National brief, p. 6).

That there is no legal sanction for such antics is obvious under the well-settled principle of law in Illinois that trust interests are not subject to garnisment proceedings (Baumgarden v Reconstruction Finance Corp., 131 F 2d 741, 7 cir, 1943); and if Messrs. Karaba, Hendricks and Hansen were unaware of it, their co-respondent First National Bank of Chicago was clearly aware: Young v First National Bank of Chicago, 85 FSupp 68, DC Ill., 1949. Illinois courts adhere to this principle under the rule that property in custodia legis is not subject to garnishment proceedings. Harris v Valen Const. Co., 200 NE 2d 70, 49 Ill App2d 265, 1964.

In Illinois where a garnishment proceeding is an ancillary statutory action in the nature of process to obtain satisfaction of a judgment rendered in a principal action or proceeding (American Auto. Ins. Co. v Freundt, 103 F2d 613, 7 cir, 1939; First Nat Bank of Palatine v Hahneman Inst. of Chicago, 356 Ill. 366, 190 NE 707,1934) garnishment proceedings must issue out of the court in which the judgment was rendered (Nesbitt v Dickover, 22 Ill App 140) and which had jurisdiction of the principal action. Selenick v Mann, 239 Ill App 589.

In prevailing upon Judge Hunter, sitting as a chancellor of the County Department of the Cook County Circuit Court, to invoke his summary fieri facias execution in the garnishment proceedings of the Mmicipal Department of Chicago, No. 64 M1-510834 (Appendix A, attached hereto; Karaba brief, p.2), the respondents led a compliant Judge into entering an order which is an absolute nullity.

The record in the garnishment proceedings shows that

the respondent, Hendricks, by his attorney, the respondent, Karaba, served his summons in garnishment on the respondent, First National Bank of Chicago "as trustee under the will of Walter S. Barnes". With all of his inherent power as a chancellor of the Divorce Division of the County Department, presiding in the matter of Byrne v Byrne, No. 63 C 8551 (First National brief, Karaba brief), Judge Hunter had no constitutional, statutory, equitable, nor inherent power to supervise or control the process of any other Illinois court. The Illinois Supreme Court has made it clear:

> "Every court has the inherent right to control its own process and, unless, authorized by statute, no other court may interfere with that right." People v Wallace, 332 Ill. 427,434, 163 NE 820(1928)

It is also well-settled in Illinois that where the court lacks the power to make or enter a particular order, the order is void:

> "It is held in Barnard v Michael, 392 Ill. 130, 63 NE2d 858, that a judgment entered by a court which lacks jurisdiction of the parties or of the subject mattter, or which lacks the inherent power to make or enter the particular order involved, is void, and may be attacked at any time or in any court either directly or collaterally. See Woodward v Ruel, 355 Ill. 163 * * *" De Phillips v DePhillips, 211 NE2d 147, 150, 63 Ill App 2d 19 (1965). (emphasis as found).

The suggestion of respondents that the signature of petitioner, and of his attorney, appearing under "ORDER APPROVED" (First National brief p. 7) could infuse an otherwise void order with any vitality is athwart a rule familiar to the

Illinois Supreme Court:

> "It is a familiar rule that when a court has no jurisdiction of the subject matter it cannot be conferred by consent * * * A judgment entered without power to enter the particular judgment is void * * * A party is not estopped by failing to raise the question in the trial court * * *" Toman v Park Castles Apt. Bldg. Corp., 31 NE 2d 299, 304, 375 ILL. 293 (1941).

---any more than the suggestion that jurisdiction could be conferred by waiver, estoppel, or appearance of the parties in the action. Jackson v Jackson, 204 NE2d 153, 156, 55 Ill App2d 77 (1965).

While the First National Bank of Chicago and its counsel are attempting, now, to show in this Court that they "appeared", "represented", and "were served" (First National brief, p. 2-4) in certain Illinois state court proceedings involving petitioner, the record in those proceedings shows that they were mere interloping strangers to the action; and they add to their brief (First National brief, pp 1a-4a) in this Court, the opinion of an Illinois Appelllate court in an action where they prevailed over petitioner on their contention that they had no duty to appear and defend in the subject action (First National brief, p. 4a).

And while they conclude their argument with a litany of judges, state and federal, who supposedly have supported their contentions, these respondents omit any reference to the only reported opinion on the merits at issue where an Illinois appelllate court could find no basis for the improvident "injunctive orders" of Judge Hunter upon which First National Bank relies to justify its refusal to fulfill its fiduciary duties to petitioner: Byrne v Byrne, 211 NE2d 1, 62 Ill App2d 336, (1965).

While respondent Karaba urges this Court to consider his efforts as his client, Hendricks', collection agent before Judge Hunter (Karaba brief, p.2) as coating his collection tactics with colorable legality--- notwithstanding his interloping status in the action then before Judge Hunter has left petitioner without any means to obtain the "release", "satisfaction", and "stipulation to dismiss" for which Hendricks received $700.00 from petitioner (Karaba brief,p 2) ---no release, satisfaction or stipulation to dismiss garnishment proceedings has been filed in the intervening 2 years.

Such extra legal "juice-loan" collection tactics can only commend themselves to one dedicated to a profanation of the law---hardly a proper commitment for Karaba's client as long-time Secretary of the State of Illinois board of law examiners.

B.

WITH RESPECT TO CONTENTIONS OF RESPONDENT Mac KINNON

Respondent MacKinnon's attempts at "clarification" of the record in this case for the benefit of the Court would have better served their end had he let the record speak for itself without personal interpretive contortions.

By what strange notion of advocacy a lawyer can say that he "represented" (MacKinnon brief, p. 2) a client, or his "client's" interest, without so much as having had a single spoken or written word with the "client"--- before, during, or after the subject proceedings--- is unclear.

Nor is there any suggestion in the record that

MacKinnon's self-arrogated appointment as petitioner's attorney was made by leave or order of any court or by any person acting on petitioner's behalf.

The record shows (R. 24-41) that MacKinnon's sum total of unauthorized "advocacy" on petitioner's behalf consisted of unburdening himself of his expertise on th relative merits of Illinois lunatic asylums.

By directing this Court's attention to a short excerpt from the state court proceedings:

"The Court: And the patient himself, Paul Byrne, is that right?". (MacKinnon brief, p.2)

MacKinnon reinforces petitioners contention that the question was addressed to petitioner and not to Mr. MacKinnon --- the pronoun "himself" is otherwise meaningless surplusage as the court reporter's notes (R. 24 and (R. 27) bear out.

The state court record in its entirety (R. 24-41) shows that respondent MacKinnon did not use, or attempt to use, a single procedural tool of an advocate to save his alleged "client" (petitioner) from the fate of swine in Illinois.

Respondent MacKinnon's misplaced reliance on the prior case, Byrne v Kysar, 347 F2d 734, (CA-7, 1965) is based on the mis-statement of fact that: "The prior Complaint was dismissed for failure to state a claim upon which relief can be granted * * *"(MacKinnon brief p. 2-3) whereas, in fact, the prior case was dismissed for want of jurisdiction (Byrne v Kysar, No. 14911,(CA 7 Appendix to Record, p. 39) and without being a judgment on the merits does not serve as a bar by way of "res judicata", "estoppel by judgment", or "collateral estoppel" to any subsequent related action (Petition for certiroari, p. 18).

CONCLUSION

The radical departure from the usual and accepted standards of judicial procedure by the respondents in this case, and as is apparent on the face of record herein, adequately states a claim which should be considered on its merits in order to ensure judicial enforcement of the Bill of Rights.

Respectfully submitted,

/s/ Paul V. Byrne, Jr.,
Petitioner
Rm 1030
10 South LaSalle Street
Chicago, Illinois, 60603

APPENDIX A.

THE MUNICIPAL COURT OF CHICAGO
First Municipal District
The Circuit Court of Cook County, Illinois

JOHN B. HENDRICKS, plaintiff-	)	
v.	)	
PAUL V. BYRNE, JR. defendant-	)	No. 64 M -- 510834
and	)	
THE FIRST NATIONAL BANK OF CHICAGO, Trustee under the will of Walter S. Barnes, Deceased, garnishee	)	* * *

Affidavit for Garnishment, Non-Wage

FRANK A. KARABA on oath states:

1. Judgment was entered on May 7, 1964 for judgment creditor John B. Hendricks and against judgment debtor Paul V. Byrne, Jr.

* * *

4. I believe The First National Bank of Chicago, Trustee u/w of Walter S. Barnes, dec. is indebted to the judgment debtor or has in his possession, custody or control property belonging to him or in which he has an interest.

I request that summons issue directed to garnishee.

/s/ Frank A. Karaba

Signed and sworn to before me May 20, 1964
/s/ _____/ (Notary Public)
Name. Frank A. Karaba. Attorney for Plaintiff.
* * *